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2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF CALIFORNIA

4

5 HDMI LICENSING ADMINISTRATOR,
6 INC.

Plaintiff,

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v.

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AVAILINK, INC.

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Defendant.

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12 1. PURPOSES AND LIMITATIONS

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14 Disclosure and discovery activity in this action are likely to involve production of
15 confidential, proprietary, or private information for which special protection from public disclosure
16 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
17 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective
18 Order (the “Stipulated Protective Order” or “Order”). The parties acknowledge that this Order does
19 not confer blanket protections on all disclosures or responses to discovery and that the protection it
20 affords from public disclosure and use extends only to the limited information or items that are
21 entitled to confidential treatment under the applicable legal principles. The parties further
22 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not
23 entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the
24 procedures that must be followed and the standards that will be applied when a party seeks
25 permission from the court to file material under seal.

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2. DEFINITIONS

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28 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
information or items under this Order.

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2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of

1 Civil Procedure 26(c).

2 2.3 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:
3 information (regardless of how it is generated, stored or maintained) or tangible things that the
4 Designating Party reasonably, in good faith, believes constitute commercially sensitive confidential
5 information, the disclosure of which would create a substantial risk of serious competitive injury,
6 including, but not limited to, proprietary information, trade secrets, previously non-disclosed
7 financial information (including without limitation profitability reports or estimates, percentage fees,
8 design fees, royalty rates, minimum guarantee payments, sales reports, and sale margins), previously
9 non-disclosed business plans, product-development information, or marketing plans, and/or any
10 information of a personal or intimate nature regarding any individual.

11 2.4 Counsel: attorneys that are not employees of a Party to this action, but are retained to
12 represent or advise a Party to this action and have appeared in this action on behalf of that Party or
13 are affiliated with a law firm that has appeared on behalf of a Party (as well as their support staff).

14 2.5 Designating Party: a Party or Non-Party that designates information or items that it
15 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “CONFIDENTIAL –
16 ATTORNEYS’ EYES ONLY”.

17 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium
18 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
19 transcripts, and tangible things), that are produced or generated in disclosures or responses to
20 discovery in this matter.

21 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the
22 litigation who has been retained by a Party or its Counsel to serve as an expert witness or as a
23 consultant in this action.

24 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
25 entity not named as a Party to this action.

26 2.9 Party: any party to this action, including all of its officers, directors, employees,
27 consultants, retained experts, and Counsel (and their support staffs).

28 2.10 Producing Party: a Party or Non-Party that produces Disclosure or Discovery

1 Material in this action.

2 2.11 Professional Vendors: persons or entities that provide litigation support services (e.g.,
3 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
4 storing, or retrieving data in any form or medium) and their employees and subcontractors.

5 2.12 Protected Material: any Disclosure or Discovery Material that is designated as
6 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

7 2.13 Receiving Party: a Party that receives Disclosure or Discovery Material from a
8 Producing Party.

9 3. SCOPE

10 The protections conferred by this Order cover not only Protected Material (as defined above),
11 but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts,
12 summaries, or compilations of Protected Material; and (3) any testimony, conversations, or
13 presentations by Parties or their Counsel that might reveal Protected Material. However, the
14 protections conferred by this Order do not cover the following information: (a) any information that
15 is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public
16 domain after its disclosure to a Receiving Party as a result of publication not involving a violation of
17 this Order, including becoming part of the public record through trial or otherwise; and (b) any
18 information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party
19 after the disclosure from a source who obtained the information lawfully and under no obligation of
20 confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a
21 separate agreement or order.

22 4. DURATION

23 Even after final disposition of this litigation, the confidentiality obligations imposed by this
24 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
25 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
26 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
27 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the
28 time limits for filing any motions or applications for extension of time pursuant to applicable law.

1 5. **DESIGNATING PROTECTED MATERIAL**

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
3 Non-Party that designates information or items for protection under this Order must take care to
4 limit any such designation to specific material that qualifies under the appropriate standards. The
5 Designating Party must designate for protection only those parts of material, documents, items, or
6 oral or written communications that qualify – so that other portions of the material, documents,
7 items, or communications for which protection is not warranted are not swept unjustifiably within
8 the ambit of this Order.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
10 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
11 encumber or retard the case development process or to impose unnecessary expenses and burdens on
12 other parties) expose the Designating Party to sanctions.

13 If it comes to a Designating Party's attention that information or items that it designated for
14 protection do not qualify for protection, that Designating Party must promptly notify all other Parties
15 that it is withdrawing the mistaken or no longer justified designation.

16 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
17 e.g., second paragraph of Section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
18 Discovery Material that qualifies for protection under this Order must be clearly so designated
19 before the material is disclosed or produced.

20 Designation in conformity with this Order requires:

21 (a) For information in documentary form (e.g., paper or electronic documents, but
22 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
23 affix the legend “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each
24 page that contains protected material. If only a portion or portions of the material on a page qualifies
25 for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
26 making appropriate markings in the margins).

27 A Party or Non-Party that makes original documents or materials available for inspection
28 need not designate them for protection until after the inspecting Party has indicated which material it

1 would like copied and produced. During the inspection and before the designation, all of the material
2 made available for inspection shall be deemed “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”
3 After the inspecting Party has identified the documents it wants copied and produced, the Producing
4 Party must determine which documents, or portions thereof, qualify for protection under this Order.
5 Then, before producing the specified documents, the Producing Party must affix the
6 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” legend to each page
7 that contains Protected Material. If only a portion or portions of the material on a page qualifies for
8 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
9 appropriate markings in the margins).

10 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
11 Designating Party identify on the record, before the close of the deposition, hearing, or other
12 proceeding, all protected testimony.

13 (c) for information produced in some form other than documentary and for any other
14 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
15 containers in which the information or item is stored or produced the legend "CONFIDENTIAL" or
16 "CONFIDENTIAL - ATTORNEYS' EYES ONLY". If only a portion or portions of the information
17 or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected
18 portion(s).

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
20 designate qualified information or items does not, standing alone, waive the Designating Party's
21 right to secure protection under this Order for such material. Upon timely correction of a
22 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in
23 accordance with the provisions of this Order.

24 || 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
26 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
27 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
28 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a

1 confidentiality designation by electing not to mount a challenge promptly after the original
2 designation is disclosed.

3 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
4 by providing written notice of each designation it is challenging and describing the basis for each
5 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
6 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
7 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
8 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
9 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
10 Party must explain the basis for its belief that the confidentiality designation was not proper and
11 must give the Designating Party an opportunity to review the designated material, to reconsider the
12 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
13 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
14 has engaged in this meet and confer process first or establishes that the Designating Party is
15 unwilling to participate in the meet and confer process in a timely manner.

16 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
17 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
18 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the
19 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process
20 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a
21 competent declaration affirming that the movant has complied with the meet and confer
22 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a
23 motion including the required declaration within 21 days (or 14 days, if applicable) shall
24 automatically waive the confidentiality designation for each challenged designation. In addition, the
25 Challenging Party may file a motion challenging a confidentiality designation at any time if there is
26 good cause for doing so, including a challenge to the designation of a deposition transcript or any
27 portions thereof. Any motion brought pursuant to this provision must be accompanied by a
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1 competent declaration affirming that the movant has complied with the meet and confer
2 requirements imposed by the preceding paragraph.

3 The burden of persuasion in any such challenge proceeding shall be on the Designating
4 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
5 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
6 Unless the Designating Party has waived the confidentiality designation by failing to file a motion to
7 retain confidentiality as described above, all parties shall continue to afford the material in question
8 the level of protection to which it is entitled under the Producing Party's designation until the court
9 rules on the challenge.

10 7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

11 7.1 **Basic Principles.** A Receiving Party may use Protected Material that is disclosed or
12 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
13 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
14 the categories of persons and under the conditions described in this Order. When the litigation has
15 been terminated, a Receiving Party must comply with the provisions of Section 13 below (FINAL
16 DISPOSITION).

17 Protected Material must be stored and maintained by a Receiving Party at a location and in a
18 secure manner that ensures that access is limited to the persons authorized under this Order.

19 7.2 **Disclosure of “CONFIDENTIAL” Information or Items.** Unless otherwise ordered by
20 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
21 information or item designated “CONFIDENTIAL” only to:

22 (a) the Receiving Party's Counsel, as well as employees of said Counsel to whom it is
23 reasonably necessary to disclose the information for this litigation;

24 (b) the officers, directors, and employees of the Receiving Party to whom disclosure is
25 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement
26 to Be Bound” (Exhibit A);

27 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
28 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement

1 to Be Bound" (Exhibit A);

2 (d) the court and its personnel;

3 (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and
4 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
5 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

6 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
7 necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A),
8 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
9 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
10 bound by the court reporter and may not be disclosed to anyone except as permitted under this
11 Stipulated Protective Order; and

12 (g) the author or recipient of a document containing the information or a custodian or
13 other person who otherwise possessed or knew the information.

14 7.3 Disclosure of "CONFIDENTIAL -ATTORNEYS' EYES ONLY" Information or
15 Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a
16 Receiving Party may disclose any information or item designated "CONFIDENTIAL –
17 ATTORNEYS' EYES ONLY" only to:

18 (a) the Receiving Party's Counsel;

19 (b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
20 reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement
21 to Be Bound" (Exhibit A);

22 (c) the court and its personnel;

23 (d) court reporters and their staff, professional jury or trial consultants, mock jurors, and
24 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
25 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

26 (e) the author or recipient of a document containing the information or a custodian or
27 other person who otherwise possessed or knew the information; and

28 (f) any other persons who may be specifically designated by consent of all Parties'

1 Counsel or pursuant to an order of the court, provided that such persons have first signed the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A).

3 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
4 LITIGATION

5 If a Party is served with a subpoena or a court order issued in other litigation (including
6 arbitrations, administrative and law enforcement proceedings and criminal actions) that compels
7 disclosure of any information or items designated in this action as “CONFIDENTIAL” or
8 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”, that Party must:

9 (a) promptly notify in writing the Designating Party. Such notification shall include a
10 copy of the subpoena or court order;

11 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
12 other litigation that some or all of the material covered by the subpoena or order is subject to this
13 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

14 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
15 Designating Party whose Protected Material may be affected.

16 If the Designating Party timely seeks a protective order, the Party served with the subpoena
17 or court order shall not produce any information designated in this action as “CONFIDENTIAL” or
18 “CONFIDENTIAL -ATTORNEYS’ EYES ONLY” before a determination by the court from which
19 the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The
20 Designating Party shall bear the burden and expense of seeking protection in that court of its
21 confidential material – and nothing in these provisions should be construed as authorizing or
22 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

23 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
24 LITIGATION

25 (a) The terms of this Order are applicable to information produced by a Non-Party in this
26 action and designated as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES
27 ONLY”. Such information produced by Non-Parties in connection with this litigation is protected by
28 the remedies and relief provided by this Order. Nothing in these provisions should be construed as

1 prohibiting a Non-Party from seeking additional protections.

2 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
3 Party's confidential information in its possession, and the Party is subject to an agreement with the
4 Non-Party not to produce the Non-Party's confidential information, then the Party shall:

5 (1) promptly notify in writing the Requesting Party and the Non-Party that some or all
6 of the information requested is subject to a confidentiality agreement with a Non-Party;

7 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in
8 this litigation, the relevant discovery request(s), and a reasonably specific description of the
9 information requested; and

10 (3) make the information requested available for inspection by the Non-Party.

11 (c) If the Non-Party fails to object or seek a protective order from this court within 14
12 days of receiving the notice and accompanying information, the Receiving Party may produce the
13 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely
14 seeks a protective order, the Receiving Party shall not produce any information in its possession or
15 control that is subject to the confidentiality agreement with the Non-Party before a determination by
16 the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of
17 seeking protection in this court of its Protected Material.

18 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

19 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
20 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
21 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
22 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
23 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
24 Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to
25 Be Bound" that is attached hereto as Exhibit A.

26 11. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
27 **MATERIAL**

28 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced

1 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties
2 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
3 modify whatever procedure may be established in an e-discovery order that provides for production
4 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
5 parties reach an agreement on the effect of disclosure of a communication or information covered by
6 the attorney-client privilege or work product protection, the parties may incorporate their agreement
7 in the stipulated protective order submitted to the court.

8 12. **MISCELLANEOUS**

9 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
10 its modification by the court in the future.

11 12.2 Right to Assert Other Objections. By stipulating to the entry of this Order no Party
12 waives any right it otherwise would have to object to disclosing or producing any information or
13 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any
14 right to object on any ground to use in evidence of any of the material covered by this Order.

15 12.3 Filing Protected Material. Without written permission from the Designating Party or a
16 court order secured after appropriate notice to all interested persons, a Party may not file in the
17 public record in this action any Protected Material. A Party that seeks to file under seal any Protected
18 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal
19 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant
20 to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the
21 Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to
22 protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant
23 to Civil Local Rule 79-5 is denied by the court, then the Receiving Party may file the information in
24 the public record pursuant to Civil Local Rule 79-5 unless otherwise instructed by the court.

25 13. **FINAL DISPOSITION**

26 Within 60 days after the final disposition of this action, as defined in Section 4, each
27 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
28 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,

1 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
2 the Protected Material is returned or destroyed, the Receiving Party must submit a written
3 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
4 by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material
5 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
6 abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected
7 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
8 pleadings; motion papers; trial, deposition, and hearing transcripts; legal memoranda;
9 correspondence; deposition and trial exhibits; expert reports; attorney work product, and consultant
10 and expert work product, even if such materials contain Protected Material. Any such archival copies
11 that contain or constitute Protected Material remain subject to this Order as set forth in Section 4
12 (DURATION).

13

14 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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16 Pursuant to Local Rule 5-1 of the Northern District of California, I attest that I have the
17 concurrence in the filing of the document from all of the other signatories.

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DATED: April 21, 2023

/S Kerry B. Brownlee

Attorney for Plaintiff (Pro Hac Vice)

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DATED: April 21, 2023

/S John R. Snyder

Attorney for Defendant (Pro Hac Vice)

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

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DATED: 4/24/2023



Hon. Haywood S. Gilliam, Jr.
United States District Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____ [print or
4 type full address], declare under penalty of perjury that I have read in its entirety and understand the
5 Stipulated Protective Order that was issued by the United States District Court for the Northern
6 District of California on _____ 2023 in the case of *HDMI Licensing Administrator, Inc.*
7 v. *Availink Inc.*, Civil Action No. 22-cv-06947-HSG. I agree to comply with and to be bound by all
8 the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so
9 comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise
10 that I will not disclose in any manner any information or item that is subject to this Stipulated
11 Protective Order to any person or entity except in strict compliance with the provisions of this Order.
12 I further agree to submit to the jurisdiction of the United States District Court for the Northern
13 District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even
14 if such enforcement proceedings occur after termination of this action.

15 I hereby appoint _____ [print or type full name] of
16 _____ [print or type full address and telephone number] as
17 my California agent for service of process in connection with this action or any proceedings related
18 to enforcement of this Stipulated Protective Order.

19
20 Date: _____

21 City and State where sworn and signed: _____

23 Printed name:

25 || Signature: